Filed 10/3/03 Barron v. City of Selma CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

BEVERLY BARRON et al.,

Plaintiffs and Respondents,

v.

CITY OF SELMA et al.,

Defendants and Appellants;

KEN HERRON et al.,

Real Parties in Interest and Respondents.

F041147

(Super. Ct. No. 01 CE CG 03853)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Gene M. Gomes, Judge.

Hargrove & Costanzo, Neal E. Costanzo and Patrick L. Enright for Defendants and Appellants.

Martin D. Koczanowicz for Plaintiffs and Respondents.

No appearance for Real Parties in Interest and Respondents.

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Neighbors of a proposed day care center sought a writ of mandate after the City of Selma approved a conditional use permit and determined that the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.[1]) did not require the preparation of an environmental impact report (EIR) before construction of the day care center. The superior court granted the writ and held an EIR must be prepared regarding the project's potential effect on noise levels, traffic and parking problems, and a historic resource.

Appellants challenge the issuance of the writ and contend the administrative record does not contain substantial evidence showing the potential for significant environmental impacts because, among other things, the opinions, concerns and speculations of the neighbors are not evidence.

After conducting an independent review of the administrative record, we determine substantial evidence supports a fair argument that the project's impact on traffic and parking may be significant to the environment; however, the evidence is insufficient to support a fair argument that the potential changes in noise and the potential changes to a historic resource might be significant. Thus, an EIR is required, but of a narrower scope than ordered by the superior court. The judgment will be modified accordingly and affirmed.

FACTS AND PROCEEDINGS

The real parties in interest, Ken and Dominique Herron (Herrons), wish to open a day care center and preschool on property they own at 3035 McCall Avenue in the City of Selma (Property). Appellants, the City of Selma and the Selma City Council (City

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[1] All further statutory references are to the Public Resources Code unless otherwise indicated.

Council), support this proposal. Respondents Beverly Barron and Victoria Delgadillo (respondents), who live near the Property, oppose its use as a day care center.

On January 16, 2001, the Herrons met with the City of Selma's Development Review Committee regarding their proposal to open a day care center on the Property. The Herrons were advised of building, fire and police concerns as well as planning issues. A second meeting was held with the development review committee and subsequently committee staff, the Herrons, their architect and the police commander met at the project site and inspected the grounds and facilities.

On March 23, 2001, the Herrons filed an application with the Selma Planning Commission (Commission) for a conditional use permit (CUP) for the day care center on the Property and proposed serving a maximum of 84 children ranging in age from three to five.

The Property is located at the intersection of McCall Avenue and Alton Street. McCall Avenue is a four-lane, north-south road that forms the Property's eastern boundary. Alton Street runs east-west and is the Property's southern boundary. The Property is a residential lot 147 feet by 250 feet, which equates to 36,750 square feet or 0.84 acres. As Alton Street approaches the southern edge of the Property from the west, it jogs slightly to the south, becomes about five feet narrower, and remains the narrower width for the length of the Property, i.e., all the way to McCall Avenue where it forms a T intersection. This physical aspect of Alton Street is described by respondents as a bottleneck. Several maps depicting the property are part of the administrative record.

The proposed driveway that will provide access to and from McCall Avenue will be 35 feet wide and the south side of the driveway will be 41 and a half feet north of the start of the McCall-Alton intersection.

The Property contains a two-story residence and a second building that serves as an office, storage area and garage. The Herrons propose interior renovations to make

the buildings suitable for the proposed use. They also propose to install a movable modular classroom as a third building.

The residence is known as "Hansen House" and was placed on the County of Fresno's list of historic places as site No. 150 on April 24, 1984. At that time, Miles and Iva Hansen lived in the house and applied for the listing. The application for historic designation described the house as a one and a half story rectangular building of wood construction believed to have been built between 1886 and 1890. The memorandum recommending the placement of Hansen House on the list of historic places states its "specific architectural features include many that are traditional Victorian such as the front door which is decorated with spindle, bead work and transom and the windows which are tall and narrow with cornices. The construction includes extensive use of square nails and 1 x 12" redwood panels grooved at the top."

With respect to interior features of Hansen House, the nomination form stated the doorways inside the house still had their quatrefoil tracings and the stairway retained its integrity. The nomination form also stated the interior had been remodeled. The recommendation for listing Hansen House as a historic place was approved by the Fresno County Board of Supervisors; the document reflecting that approval does not contain any indication as to which features the board regarded as historically significant and which features were not.

On April 18, 2001, an "Initial Study and Findings, *Environmental Assessment No. 2001-0020*" concerning the proposed day care center and related CUP was completed by the City of Selma Development Department (Development Department). The initial study found the proposed project could not have a significant effect on the environment and stated a negative declaration would be prepared. With respect to the topics relevant to this appeal, the initial study found a "less than significant impact" to existing noise levels and to traffic congestion and vehicle trips. Also, the initial study

found "no impact" due to insufficient parking capacity on-site or off-site and "no impact" on historic resources.

The Commission scheduled a special public meeting for May 14, 2001, to consider the Herrons' application, the CUP and the proposed negative declaration. The meeting began at 7:00 p.m. and was adjourned at 11:34 p.m. The Commission heard a detailed report by a senior planner from the Development Department and then heard statements from members of the public who attended the meeting. These statements, both for and against the proposed project, were transcribed and included in the minutes of the meeting. At the end of the meeting, the Commission approved the CUP and negative declaration by a five-to-two vote. Fifty-seven conditions of approval were imposed upon the CUP; those conditions were listed in an attachment to the resolution that approved the CUP.

CUP condition No. 55 states in part: "The applicant shall not demolish, move, or cause substantial physical change to the exterior of the existing two-story residence.… Pursuant to state and federal historic preservation guidelines, the exterior of the house shall not undergo substantive alterations without filing for an amendment to this Conditional Use Permit."

CUP conditions Nos. 49 through 52 address traffic and parking matters. With respect to parking, the conditions require (1) the curb on McCall along the eastern border of the Property to be marked in red indicating that no parking is permitted, (2) the Traffic Safety Committee to choose between a no parking red curb for the Property's southern border along Alton Street or signs prohibiting parking during certain hours, and (3) signs to designate the employee parking area on the Property. The conditions concerning traffic require McCall Avenue to be marked with a clearly defined deceleration lane for southbound traffic turning right into the Property's driveway; the vehicle circulation area on the Property to be paved, striped and marked

in accordance with city standards; and the on-site traffic circulation signage to include an exit sign indicating only a right turn onto McCall is permitted.

In February 1998, traffic engineers surveyed for a 24-hour period the traffic using the four lanes of McCall Avenue between Oak Street and Alton Street. The data recorded by each of the four survey units was summarized in a computer-generated report. These reports were included in the administrative record. The No. 1 northbound lane had a total volume of 2,702 vehicles and its busiest 15-minute period started at 2:45 p.m. and included 84 vehicles. The No. 2 northbound lane had a total volume of 2,904 vehicles and its busiest 15-minute period also started at 2:45 p.m. but included 90 vehicles. In the No. 1 northbound lane, 25 percent of the vehicles exceeded the posted speed limit of 40 miles per hour. In the No. 2 northbound lane, 17 percent exceeded the speed limit.

In the No. 2 southbound lane of McCall Avenue, the lane from which traffic will enter and leave the Property, traffic volume for the day was 1,905 vehicles, with a peak of 67 vehicles passing through the location during the 15-minute period beginning at 3:45 p.m. About 16 percent of these vehicles were speeding. The No. 1 southbound lane experienced a total traffic volume of 1,057 vehicles, with a peak of 79 vehicles during the 15-minute period beginning at 2:15 p.m.; 8 percent of the vehicles exceeded the posted speed limit.

With respect to traffic on Alton Street, one individual stated at the May 14, 2001, hearing that his count of cars on Alton Street was 190 per day. A memorandum from the police department indicates that (1) no reported collisions occurred at the McCall-Alton intersection in 1998 and 1999, (2) one collision was reported in 2000 and (3) one collision was reported in the first half of 2001.

In a letter to the Development Department, the Herrons proposed ending the afternoon sessions at 3:30 p.m. and 4:00 p.m. The sessions were staggered to spread out the traffic occurring from parents dropping off and picking up their children. A

maximum of 48 children would attend a session. The letter also indicates that at least one van will be available to provide transportation for up to 16 children in the morning and 16 children in the afternoon.

A memorandum submitted by some neighbors to the project asserts the following regarding traffic and congestion:

> "The intersections at McCall/Alton, McCall/Alton Court and Oak/McCall are already congested due to the Selma High School, Roosevelt School, Roosevelt Head Start, and the Cathedral Christian School in the mornings, at noon (for the high school) and at the afternoon hours (around 3:00 P.M.). The majority of cars traveling on McCall Avenue currently speed. The volume of traffic is already dangerous because we as residents cannot drive onto McCall from our streets without waiting sometimes up to 10 minutes during peak and nonpeak times. Allowing the daycare/preschool will increase the volume of traffic from those dropping off children and then trying to get back on McCall Avenue like the rest of us."

On May 25, 2001, respondent Delgadillo presented a written appeal to the City Council of the decision by the Commission. On July 2, 2001, the City Council, with one member absent, heard the appeal from the decision of the Commission. The public hearing portion of the meeting occurred between 7:40 p.m. to 10:10 p.m. The vote of the council members resulted in a tie and, as a result, the appeal did not carry.

On August 20, 2001, the City Council voted to reconsider the appeal with all five members present. On October 1, 2001, another public hearing was conducted and by a three-to-two vote, the City Council approved the Commission's adoption of the CUP and negative declaration.

Respondents filed a petition for writ of mandate and, in the alternative, administrative mandamus with the Fresno County Superior Court on November 8, 2001. Respondents also lodged 1,309 pages of administrative record with the superior court. The Herrons lodged over 200 forms from members of the public expressing support of or lack of objection to the project. The superior court heard the matter on April 15,

2002. The superior court considered the administrative record, and no evidence or testimony was introduced at the hearing.

The superior court's order granting writ of mandamus was filed on May 30, 2002. The superior court determined that an EIR should address the impact of the project on traffic, parking, noise and a historic resource. On June 18, 2002, an order and judgment was filed and decreed that the writ of mandate was granted and the CUP and the related negative declaration were to be withdrawn. A timely appeal was taken from the May 30, 2002, order and the order and judgment filed on June 18, 2002.

DISCUSSION

There is no dispute that the renovation of Hansen House and development of the Property for use as a day care center is a "project" for purposes of CEQA because it will cause a direct physical change to the environment and involves the issuance to a person of a permit by one of more public agencies. (§ 21065, subd. (c); CEQA Guidelines § 15378, subd. (a)(3).[2]) Also, there is no claim that the project is statutorily or categorically exempt. The dispute concerns whether the City of Selma correctly determined the project would not have a significant effect on the environment.

I. Standard of Review

Respondents contend that (1) the doctrine of implied findings applies to the superior court's decision to grant the petition for writ of administrative mandamus because none of the parties requested a statement of decision and (2) this court may not conduct a de novo review of the superior court's decision to issue the writ. Respondents' contentions, which are not supported by citation to any CEQA cases, were

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[2] All further references to "Guidelines" are to the CEQA Guidelines, promulgated by the California Resources Agency pursuant to Public Resources Code section 21083 and found at title 14 of the California Code of Regulations, section 15000 et seq.

explicitly rejected over 27 years ago (*City of Carmel-by-the Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 236-237) and, in effect, request a dramatic change in the legal rules defining the role of the superior court and appellate courts in a CEQA case.

A. General Principles

It is well established in CEQA cases that (1) the agency is the finder of fact, (2) the superior court's findings are not binding on the Court of Appeal, and (3) the scope and standard of review applied by the Court of Appeal to the agency's decision is the same as that applied by the superior court. (*Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1277 [county's approval of a negative declaration and conditional use permit reinstated and trial court reversed]; see §§ 21168,[3] 21168.5.) These principles are directly contrary to respondents' contentions regarding the role of a statement of decision in the appellate review of an agency's decision. (See *City of Carmel-by-the Sea v. Board of Supervisors*, *supra*, 183 Cal.App.3d at pp. 236-237 [trial court's review of administrative record in a CEQA case is not a factfinding process requiring a statement of decision].)

B. Fair Argument Test

In CEQA cases involving the approval of a negative declaration, i.e., a decision that an EIR is not necessary, it is well established that the "fair argument" test is applied. (*Laurel Heights Improvement Assn. v. Regents of University of California*

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[3] Section 21168 provides: "Any action or proceeding to attack, review, set aside, void or annul a determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency, on the grounds of noncompliance with the provisions of this division shall be in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure. [¶] In any such action, the court shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence in the light of the whole record."

(1993) 6 Cal.4th 1112, 1123; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144 [Fifth District]; see §§ 21080, subds. (c) and (d) & 21151.) Under that test, the reviewing court determines whether there was substantial evidence in the whole record of the proceedings to support a fair argument that the project may have a significant effect on the environment. (CEQA Guidelines, § 15064, subd. (f)(1); see generally, 9 Miller & Starr, Cal. Real Estate (3d ed. 2000) § 25.185, pp. 494-497 [discussion of the fair argument test].)

A project "may" have a significant effect on the environment if there is a "reasonable probability" that it will result in a significant impact. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83, fn. 16.) If there is substantial evidence of a reasonably probability of a significant impact, contrary evidence is not adequate to support a decision to dispense with an EIR. (*League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904-905.)

This court has previously held that application of the "fair argument" test is a question of law subject to independent review by the Court of Appeal. (*Stanislaus Audubon Society, Inc. v. County of Stanislaus*, *supra*, 33 Cal.App.4th at p. 151.) "[W]e independently 'review the record and determine whether there is substantial evidence in support of a fair argument [the proposed project] may have a significant environmental impact, while giving [the lead agency] the benefit of a doubt on any legitimate, disputed issues of credibility.'" (*Ibid.,* quoting *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1603.)

Substantial evidence, for purposes of the fair argument test, includes fact, a reasonable inference predicated upon fact, or expert opinion supported by fact. (§ 21080, subd. (e)(1).) Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts unrelated to physical impacts on the environment. (§ 21080, subd. (e)(2).)

II. Substantial Evidence of Significant Impact on the Environment

A. Traffic

A number of CEQA cases have considered the changes in traffic caused by a project and the impact of those changes in traffic on the environment. (E.g. *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 695-697 [EIR's analysis of traffic impacts and identification of mitigating measures was clearly sufficient and supported by substantial evidence]; *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 135-141 [EIR was adequate as to traffic impact]; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1414-1415 [negative declaration overturned, possible increase in traffic of 129 percent might result in significant environmental effect]; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 880 [upheld board of supervisor's decision that mining exploration project required an EIR because of potential environmental impact of traffic, noise and well water use]; *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1353 [issuance of negative declaration upheld, no substantial evidence of a potentially significant environmental effect from concentration of heavy equipment used in the county at one location instead of several]; *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 262 [CEQA applied to issuance of building permit for 26-story office tower, city had discretion to impose conditions on building permit to address traffic and parking impact of the building]; *City of Carmel-by-the Sea v. Board of Supervisors*, *supra*, 183 Cal.App.3d at pp. 245-246 [rezoning decision required preparation of EIR because fair argument existed that traffic, noise and pollution could result in significant environmental impact]; *City of Orange v. Valenti* (1974) 37 Cal.App.3d 240, 249 ["state may not put a traffic snarling, parking congesting activity, slam-bang in the middle of a quiet, single-family residential area" without an EIR].)

In this case, we conclude (1) those statements by residents near the project that are credible, (2) the 1998 data and analysis of the traffic on McCall, (3) the physical configuration of the McCall-Alton intersection, and (4) the number of children who will attend the proposed day care center give rise to factual inferences that support a fair argument that the project's impact on traffic could have a significant environmental impact. These factual inferences constitute substantial evidence.

Specifically, the peak time for traffic in the No. 2 southbound lane of McCall Avenue (3:45 to 4:00 p.m.) will be a time when children are being picked up at the day care center. If one infers that 30 vehicles will enter and leave the Property to pick up the 42 children and that those vehicles are evenly spaced over the half hour period, 15 additional vehicles will be added to the peak of 67 vehicles that use the No. 2 southbound lane during the 15-minute period beginning at 3:45 p.m. These 15 additional vehicles represent an increase of 22.4 percent. Also, one can infer the impact of these vehicles on southbound traffic will be more significant than a simple 22.4 percent increase in traffic because the vehicles will slow to enter the Property and shortly thereafter will leave the Property and rejoin the southbound traffic on McCall Avenue. This activity, as it involves deceleration and acceleration, will take more time on McCall than just driving past the Property at the posted 40 mile per hour speed limit. Furthermore, the return of these vehicles to McCall Avenue will make it more difficult for traffic on Alton to turn onto McCall Avenue.

The record does not show that the City of Selma adopted a standard defining what is a significant impact on traffic. (Cf. *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 756 [City of Hayward adopted 10 percent as the standard for when a delay in traffic was "significant"; 1 and 2 percent increases in traffic at rush hours were not significant]; see generally, Watts, *Reconciling Environmental Protection With the Need For Certainty: Significance Thresholds in CEQA* (1995) 22 Ecology L. Q. 213.) In the absence of such a standard and the "low

threshold" of the fair argument test (*Stanislaus Audubon Society, Inc. v. County of Stanislaus*, *supra*, 33 Cal.App.4th at p. 151 [negative declaration overturned and preparation of EIR mandated]), we determine that a fair argument exists over whether or not the increased traffic from the project will have a significant effect on the environment. Consequently, an EIR must be prepared to evaluate (1) the impact the project will have on traffic and (2) whether that change in traffic will significantly affect the environment.

B. Parking

The project will increase the demand for parking and will decrease the supply of parking spaces on McCall Avenue and Alton Street. Parents and employees will be the source of the increased demand. The decrease in supply of street parking will result from the conditions in the CUP that eliminate parking on McCall Avenue along the east side of the Property and modify or eliminate the parking on Alton Street along the south side of the Property. This decrease in street parking will be offset by the 19 parking spaces created on the Property. Some of these spaces will be reserved for employees and some will be available to the parents who choose not to use one of the two student drop-off areas.

The relationship between parking and the environment was recently addressed by the First District: "[T]here is no statutory or case authority requiring an EIR to identify specific measures to provide additional parking spaces in order to meet an anticipated shortfall in parking availability. The social inconvenience of having to hunt for scarce parking spaces is not an environmental impact; the secondary effect of scarce parking on traffic and air quality *is*." (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco*, *supra*, 102 Cal.App.4th at p. 697.)

Because an EIR will be required for the project's impact on the environment as a result of the changes in traffic and the changes in parking will have secondary effects on

traffic, it follows that the EIR analysis of traffic must necessarily include an analysis of how the changes in supply and demand for parking will affect traffic.

C. Noise

An increase in noise may adversely effect a change in the environment. (Guidelines, § 15382; see Pub. Resources Code, §§ 21060.5, 21100, 21151.) It is undisputed that the activity of the children during recesses held outside will generate noise. The question before us is whether there is a reasonable probability the noise from the children's recesses will have a significant impact on the environment.

Respondents point to four items in the administrative record--the last three of which are statements made at the special public meeting on May 14, 2001--and contend these items constitute substantial evidence supporting their arguments about the significance of the impact of noise from the project.

First, respondents point to the Herrons' amended operational statement that indicates (1) their plan to reduce the length of recess from 30 minutes to 20 minutes in order to reduce the noise impact on the neighborhood and (2) a willingness to have no recess activity in the rear play area before 10:00 a.m. to accommodate their neighbor to the west.

Second, a senior planner from the Development Department stated: "Day time noise will increase, but it is minimized and it is within residential standards and with the staggered classes and the staggered recess sessions, the earliest will begin at ten, will minimize the noise that could be produced if the project is maxed out with [84] children all at the same time."

Third, respondent Delgadillo stated: "It is unfair that somebody can come and put a preschool/daycare there in front of your property when you have a little baby that needs his rest. I cannot run my air conditioner twenty-four hours because the bill had tripled. I have to leave that window open because that little guy needs air. How is he going to sleep with that preschool, those kids out there playing directly in front of me?"

Fourth, Marina Marciano, who lives on a lot with a shallow backyard abutting the Property, stated: "[T]he only reason we chose [our house] and gave up the size of the backyard, it was precisely because we were going to live next to the old home. A beautiful home, peace and quiet, backyard and because it was going to stay that way. I am a stay at home mother. I take care of my three and a half year old child.[4] I enjoy the peace and tranquility all day. Our master bedroom is exactly [f]ifteen feet from that backyard."

None of these items from the administrative record specify the expected increase in decibel levels created by the children during their 20- to 30-minute recesses or analyze the expected increase using a single event level or a community noise equivalent level (an average decibel level over a fixed period of time). (See generally *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344.) The only statement concerning the level of noise is the conclusion by the senior planner that the level of noise will be within residential standards. Respondents' appellate brief refers to the noise standards contained in the City of Selma's General Plan, but does not refer to any evidence contradicting the senior planner's conclusion that the noise from the project will be within the residential standards. The statements of the two residents contain their predictions that they will be bothered by the level of noise and imply that they are of the opinion that the level of noise will be great. However, speculation and the opinions of individuals who are not experts are not substantial evidence. (*Magan v. County of Kings* (2002) 105 Cal.App.4th 468, 477; see § 21080, subd. (e)(2) [speculation and unsubstantiated opinion is not substantial evidence]; see also § 21082.2 [public controversy is not evidence of significance of effect].) Thus, these statements are not evidence from which we may infer that the

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4 Now, the child is approximately five years old.

noise level will exceed the residential standards[5] or otherwise cause a significant impact on the environment.

Respondents implicitly recognize their argument contains this deficiency and assert that it was the responsibility of the City of Selma "to perform any acoustical analysis to define the impact from 80 plus children playing within a few feet of local residents' homes …." This argument has two flaws.

First, respondents fail to cite any legal authority for the proposition that the City of Selma was required to conduct an acoustical analysis and enter that analysis into the administrative record. (See *Akins v. State of California* (1998) 61 Cal.App.4th 1, 50 [contention waived by failure to cite legal authority]; see also Cal. Rules of Court, rule 14.)

Second, the relevant environment[6] is the entire area that will be affected by the project.[7] Respondents' focus on the impact on next-door neighbors instead of the impact on the entire area affected is too narrow of a perspective. (See *Lucas Valley Homeowners Assn. v. County of Marin* (1991) 233 Cal.App.3d 130, 156 [negative declaration upheld; although project's noise impact might be disturbing or irritating to some people, substantial evidence supported determination that the synagogue in a

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[5] Respondents did not argue that the noise element of the City of Selma's General Plan was not a "standard" as that term is defined in Guidelines section 15064, subdivision (h)(3). (See Guidelines, § 15064, subd. (h)(1)(A).)

[6] For purposes of CEQA, "environment" means the "physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." (§ 21060.5.)

[7] Section 15360 of the Guidelines provides in part: "The area involved shall be the area in which significant effects would occur either directly or indirectly as a result of the project."

residential area would not have a significant environmental impact on Lucas Valley]; see also *Leonoff v. Monterey County Bd. of Supervisors*, *supra*, 222 Cal.App.3d at p. 1353 [discussing opponents' myopic perspective of project's impact on traffic]; 1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2003) § 6.44, p. 291 [adverse changes in environment relate to human beings generally and not particular individuals].)

In light of the foregoing, we determine that the administrative record does not contain substantial evidence supporting a fair argument that the noise impact from the proposed day care center may have a significant effect on the environment. Accordingly, the EIR need not address the environmental impact of noise from the project.

D. Hansen House as a Historic Resource

1. Historic Significance of Interior

The parties dispute whether or not the interior of Hansen House contains any historic resources. The only mention in the administrative record of the historic significance of the interior of Hansen House was contained in the form nominating it for historic designation. However, there is no evidence that the Fresno County Board of Supervisors determined that any portion of the interior, as it existed at the time of the listing application in 1984, had historic significance. The memorandum recommending the listing mentions only the external features of Hansen House. Furthermore, there is no evidence to show that any interior features that might have been considered historically significant in 1984 still existed inside Hansen House at the time the CUP was approved in 2001. In light of this absence of evidence concerning the historic features of the interior of Hansen House, we reject respondents' argument that changes to the interior of Hansen House will have a significant adverse impact on a historic resource. (See *Citizens for Responsible Development v. City of West Hollywood* (1995)

39 Cal.App.4th 490, 501 [no evidence in record demonstrated that interiors of historic buildings were in any way significant; negative declaration upheld]; § 21084.1.)

2. Historic Significance of Exterior and Surroundings

With respect to the exterior of Hansen House, the memorandum recommending the placement of Hansen House on the list of historic places states its "specific architectural features include many that are traditional Victorian such as the front door which is decorated with spindle, bead work and transom and the windows which are tall and narrow with cornices. The construction includes extensive use of square nails and 1 x 12" redwood panels grooved at the top." The Fresno County Board of Supervisors adopted the recommendation without further comment on which exterior features of the Hansen House were historically significant.

To protect the exterior features of Hansen House, condition No. 55 was imposed upon the CUP. Under that condition, insofar as it actually restricts what may be done to the exterior of Hansen House, "[t]he applicant shall not demolish, move, or cause substantial physical change to the exterior of the existing two-story residence.… Pursuant to state and federal historic preservation guidelines, the exterior of the house shall not undergo substantive alterations without filing for an amendment to this Conditional Use Permit."

Respondents argue that the condition is inadequate to protect the historic value of Hansen House because (1) it does not address the preservation of the immediate surroundings of the building, which are important because they provide the context or setting for the building, and (2) the modification contemplated for allowing wheelchair access requires the construction of pathways that will modify the exterior of the lower level of the house.

Both of these arguments fail. The administrative record does not contain evidence connecting the significance of the historic features of Hansen House to its immediate surroundings. Simply making the argument that the surroundings are

important is not the same as presenting substantial evidence connecting the surroundings to the historic significance of Hansen House. (Cf. *Gentry v. City of Murrieta*, *supra*, 36 Cal.App.4th at p. 1418 [opponents of project actually presented evidence of how the layout of Los Alamos Road related historically to surrounding features].) Similarly, there is no evidence in the administrative record that the addition of a ramp for wheelchairs and handicap access is an alteration that would materially impair the significance of the historical resource, i.e., the features of Hansen House that convey its historical value. (See Guidelines, § 15064.5, subd. (b)(1).)

Respondents also argue that condition No. 55 on the CUP "is a vague restriction" because it fails to define how changes in landscaping, an additional building, fencing and parking facilities will not impact the structure's historical significance. This argument fails for the same reason the other arguments concerning the surroundings of Hansen House failed. It assumes, without supporting evidence, that the surroundings are connected to the historical significance of Hansen House.

Respondents further argue condition No. 55 fails to impose any standard or specific criteria on the Herrons to assure that their proposed construction would not have a substantial adverse change on the historical significance of the structure. We conclude the requirements that the Herrons not "cause substantial physical change to the exterior of the existing two-story residence" and that "the exterior of the house shall not undergo substantive alterations without filing for an amendment to this Conditional Use Permit" are not vague with respect to the maintenance of the exterior of Hansen House. In other words, condition No. 55 imposes mitigation measures that prevent alterations that would materially impair the significance of the historical resource. It is not practical to expect the conditions imposed on the CUP to contain an exhaustive list of modifications that may and may not be done to the exterior of Hansen House. The general prohibition of "substantial physical change to the exterior" and "substantive alterations to the exterior" along with the references to various standards concerning the

maintenance of historical resources sufficiently notify the Herrons of their responsibility to preserve the historically significant features of Hansen House.

Finally, the requirements imposed on the use permit in *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296 are distinguishable from the conditions prohibiting substantial physical changes to the exterior of Hansen House. In *Sundstrom*, the use permit required the applicant to adopt mitigation measures recommended in a future study. The court held the future mitigation measures were in direct conflict with the Guidelines because that procedure allowed the project plans to be changed after the final adoption of the negative declaration. (*Id*. at pp. 306-307.) In this case, the prohibition of substantial physical changes to the exterior of Hansen House was established before the negative declaration received its final approval by the City Council.

In light of the facts contained in the administrative record and the restrictions imposed by the CUP, we conclude that there is no substantial evidence supporting a fair argument that there is a reasonably probability that the project may cause a significant adverse change to a historical resource. Accordingly, the EIR need not address the impact of the project on historical resources.

DISPOSITION

The May 30, 2002, order granting the petition for writ of mandate is modified to exclude the determinations that the EIR must address the impact of the project on (1) historical resources and (2) noise. As modified, the May 30, 2002 order is affirmed. The Order and Judgment filed June 18, 2002, is modified so that the sentence that reads "By reasons set forth in the Order, Petitioners are entitled to judgment against the Respondents" is deleted and replaced by the following sentence: "By reasons set forth in the May 30, 2002, Order, as modified by the Fifth District of the California Court of Appeal, Petitioners are entitled to judgment against the Respondents." As modified, the

Order and Judgment filed June 18, 2002 is affirmed. In light of the partial success of appellants in this appeal, the parties shall bear their own costs on appeal.

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VARTABEDIAN, Acting P. J.

WE CONCUR:

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WISEMAN, J.

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LEVY, J.